



118
City of Las Cruces[®]
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Council Action and Executive Summary

Item # 7

Ordinance/Resolution# 10-181

Council District: All City

For Meeting of January 19, 2010
 (Adoption Date)

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ACCEPT A GRANT AWARD FOR FISCAL YEAR 2009-2010 IN THE AMOUNT OF \$18,700 FROM THE NEW MEXICO TOURISM DEPARTMENT FOR THE LAS CRUCES CONVENTION & VISITORS BUREAU, WHICH REQUIRES A THREE HUNDRED PERCENT (300%) MATCH AND TO ADJUST THE FISCAL YEAR 2009-2010 BUDGET.

PURPOSE(S) OF ACTION: Accept the New Mexico Tourism Department Cooperative Marketing Grant Agreement and Award.

Name of Drafter: Ken Mompellier <i>KM/abm</i>		Department: Public Services/CVB		Phone: 541-2166	
Department	Signature	Phone	Department	Signature	Phone
Originating Department	<i>[Signature]</i>	528-3477	Budget	<i>[Signature]</i>	2300
			Assistant City Manager	<i>[Signature]</i>	2271
Legal	<i>[Signature]</i>		City Manager	<i>[Signature]</i>	2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The New Mexico Tourism Department (NMTD) solicited proposals, through their Cooperative Marketing Program, from non-profit organizations for an advertising contract in furtherance of the NMTD's marketing programs. Funding is provided to non-profit organizations in the State for promoting the State of New Mexico as a tourist destination. The City of Las Cruces Convention & Visitors Bureau (CVB) has been a recipient of this particular grant for the past twelve years.

The CVB received the request for proposal from the NMTD for the 2009-2010 Fiscal Year Cooperative Advertising Program on May 6, 2009. In May 2009, the CVB submitted a grant application request to City Council and received approval to apply to the NMTD for a grant not to exceed \$20,000 with a 300% match. As a result, the CVB has been awarded an appropriation in the amount of \$18,700 from the NMTD.

The grant will allow the CVB to further its advertising campaign (print, outdoor, website development, etc.) to enhance overnight business to Las Cruces from the convention, sports, group tour and leisure markets, thus increasing the Lodger's Tax collections.

A budget adjustment to the Fiscal Year 2009-2010 budget is needed to reflect the grant amount of \$18,700 in the adopted budget. The total adjusted amount being requested is only 100% of the match amount which is equivalent to \$18,700 since there are sufficient funds to cover the additional 200% match requirements in the current CVB Advertising line item. During the budget

(Continue on additional sheets as required)

process in early 2009, the CVB anticipated receiving the same grant amount as the previous year and budgeted \$20,000 in grant award revenue. Therefore, the revenue account must be adjusted/reduced by \$1,300 to reflect the \$18,700 award for 2009-2010.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
CVB - Advertising 27205020-722104	\$18,700	\$18,700 – Pending Adjustment

1. Exhibit "A" - Agreement No.: 10-418-3002-0022
2. Exhibit "B" - Budget Adjustment Form

OPTIONS / ALTERNATIVES:

1. Vote "Yes" and approve the Resolution. This will authorize the City of Las Cruces to accept a grant award for Fiscal Year 2009-2010 in the amount of \$18,700 from the New Mexico Tourism Department for the Las Cruces Convention & Visitors Bureau, and adjust the Fiscal Year 2009-2010 budget.
2. A "No" vote will require the City to refuse the grant award and reduce the current advertising campaign thru print and outdoor advertising as well as website development which is used to encourage overnight business to Las Cruces.
3. "Amend" and direct staff to pursue other options. This would not allow the CVB adequate time to meet the established deadline to submit the signed agreement and would not allow the CVB to obtain \$18,700 in grant funds to enhance advertising efforts.

RESOLUTION NO. 10-181

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ACCEPT A GRANT AWARD FOR FISCAL YEAR 2009-2010 IN THE AMOUNT OF \$18,700 FROM THE NEW MEXICO TOURISM DEPARTMENT FOR THE LAS CRUCES CONVENTION & VISITORS BUREAU, WHICH REQUIRES A THREE HUNDRED PERCENT (300%) MATCH AND TO ADJUST THE FISCAL YEAR 2009-2010 BUDGET.

The City Council is informed that:

WHEREAS, the New Mexico Tourism Department (NMTD), through their Cooperative Marketing Program, solicited proposals for advertising contracts in furtherance of the NMTD's marketing programs; and

WHEREAS, the Las Cruces Convention & Visitors Bureau (CVB) received a request for proposal for FY 2009-2010; and

WHEREAS, the CVB has been a recipient of this particular grant for the past twelve years; and

WHEREAS, CVB requested and received approval from City Council in May 2009 to apply to the NMTD for a grant not to exceed \$20,000 which required a 300% match (\$60,000 max); and

WHEREAS, as a result, the CVB has been awarded an appropriation of \$18,700 which will require a 300% match and 100% of that match is equivalent to \$18,700 which is not part of the existing CVB expenditures; and

WHEREAS, the grant will allow the CVB to further its advertising campaign (print, outdoor, website development, etc.) to enhance overnight business to Las Cruces from the convention, sports, group tour and leisure markets, thus increasing the Lodger's Tax collections; and

WHEREAS, a budget adjustment to the Fiscal Year 2009-2010 budget is needed to reflect the grant award of \$18,700 by adjusting the revenue and expenditure accounts in the adopted budget.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the Mayor is authorized to sign and accept the Fiscal Year 2009-2010 agreement from the New Mexico Tourism Department designated as Exhibit "A", attached hereto and made a part of this Resolution.

(II)

THAT the City of Las Cruces Fiscal Year 2009-2010 budget is hereby adjusted, designated as Exhibit "B", attached hereto and made a part of this Resolution.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2010.

APPROVED:

(SEAL)

Mayor

ATTEST:

City Clerk

VOTE:

Moved by: _____

Mayor Miyagishima: _____

Seconded by: _____

Councillor Silva: _____

APPROVED AS TO FORM:

Councillor Connor: _____



City Attorney

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

NEW MEXICO TOURISM DEPARTMENT
COOPERATIVE MARKETING GRANT AGREEMENT

WHEREAS the New Mexico Tourism Department has been funded by the New Mexico State Legislature for a community cooperative marketing program, and;

WHEREAS the New Mexico Tourism Department desires to promote tourism for the State of New Mexico, in cooperation with **City of Las Cruces on behalf of its Convention and Visitors Bureau**, and;

WHEREAS **City of Las Cruces through its Convention and Visitors Bureau** agrees to provide advertising and promotional service to accomplish the above stated purpose and will provide matching funds to further the above purpose, said parties hereby enter into this agreement.

NOW, THEREFORE:

THIS AGREEMENT, made and entered into by and between the State of New Mexico, Tourism Department, hereinafter referred to as the "Department", and **City of Las Cruces on behalf of its Convention and Visitors Bureau**, hereinafter referred to as the "Contractor."

THIS AGREEMENT IS EFFECTIVE JULY 1, 2009. THE DEPARTMENT SHALL NOT BE OBLIGATED TO PAY THE CONTRACTOR FOR ANY SERVICE THAT COMMENCED PRIOR TO THE EFFECTIVE DATE.

DEFINITIONS:

Quarter: For the purpose of this agreement a quarters are designated as:

- First Quarter – July through September
- Second Quarter – October through December
- Third Quarter – January through March
- Fourth Quarter – April through June

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **SCOPE OF WORK:**
The Contractor agrees:

To promote New Mexico and the Las Cruces area through print, research, outdoor, production and fulfillment advertising.

Total Marketing Budget: is \$120,000 or more and the Department will provide a 33.33% match of eligible expenses up to the grant award.

Contractor Payment for Reimbursable Eligible Expenses: \$56,105.61

The Contractor agrees:

- **To meet or exceed twice the Department award through actual cash expenditures; in-kind services do not qualify toward the match requirement.**
- To meet the requirements of the 2009-2010 Request for Proposals.
- The Tourism Department's logo or tag line "visit www.newmexico.org" must be used on all advertising, in the case of radio advertising the slogan "New Mexico Land of Enchantment" must be used as well as "funded in part by the New Mexico Tourism Department".
- To provide its own funds above and beyond the agreed compensation to perform this agreement.

Deliverables:

End of year evaluation report: Submitted with the final request for payment, on or before May 31, 2010.

Proof of commitment: Due **January 1, 2010** (This applies to the balance of unused funds not reimbursed to the contractor as of January 1, 2010)

2. COMPENSATION:

A. The Department shall reimburse to the Contractor in full payment for services rendered an amount not to exceed \$18,700.00.

B. Gross Receipts Tax

The Contractor is a non-profit organization therefore is exempt from the payment of New Mexico Gross Receipts Tax, and/or is registered with the New Mexico Taxation and Revenue Department to pay gross receipts tax, if applicable.

C. Payment

Payment shall be made upon receipt of a detailed package of proof of performance. The proof of performance package must include all the supporting documentation. Compliance must be made with 2009-2010 Request for Proposal Guidelines and Request for Payment Form. Requests for payment must be submitted on a quarterly basis as follows: **Requests must be postmarked on or before the fifteenth (15th) day after the end of each quarter except for the fourth quarter ending May 31st; it must be postmarked on or before the tenth (10th) day of June 2010.** Failure to adhere to these requirements can result in a penalty assessed on the invoice equal to 10% of the total invoice submitted for the first, second and third quarters. Failure to adhere to these requirements for the fourth quarter will result in the remaining agreement balance being returned to the Department. The balance will not be reimbursed at a future date.

3. **TERM:**

THIS AGREEMENT IS EFFECTIVE JULY 1, 2009. This Agreement shall terminate on **June 30, 2010**, unless terminated pursuant to paragraph 4, *infra*.

4. **TERMINATION:**

A. Termination

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least ten (10) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. This Agreement may be terminated immediately upon written notice to the Contractor, if the Contractor becomes unable to perform the services contracted for, as determined by the Department or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

B. **Termination Management**

Immediately upon receipt by either the Department or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Department; 2) comply with all directives issued by the Department in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Department shall direct for the protection, preservation, retention or transfer of all property titled to the Department and client records generated under this Agreement and any non-expendable personal property or equipment purchased by the Contractor with agreement funds shall become property of the Department upon termination. On the date the notice of termination is received, the Contractor shall furnish to the Department a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Department agreements with the Contractor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Contractor under the paragraph of this Agreement regarding financial records

5. **STATUS OF THE CONTRACTOR:**

The Contractor, and his agents and employees, are independent contractors performing professional services for the Department and are not employees of the State of New Mexico. The Contractor, and his agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement.

6. **ASSIGNMENT:** 125

The Contractor shall not assign or transfer any interest in this agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Department.

7. **SUBCONTRACTING:**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Department.

8. **RECORDS AND AUDIT:**

The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Department, The Department of Finance and Administration, and the State Auditor. The Department shall have the right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

9. **APPROPRIATIONS:**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate upon written notice being given by the Department to the Contractor. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

10. **RELEASE:**

The Contractor, upon final payment of the amount due under this Agreement releases the Department, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

11. **CONFIDENTIALITY:**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Department.

12. PRODUCT OF SERVICES: COPYRIGHT:

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Department no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

13. GOVERNMENTAL CONDUCT ACT:

The Contractor warrants that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978, regarding contracting with a public officer or state employee have been followed.

14. AMENDMENT:

This Agreement shall not be altered, changed or amended except by instrument, in writing, executed by the parties hereto.

15. MERGER:

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

16. NOTICE:

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

17. EQUAL OPPORTUNITY COMPLIANCE:

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation, or, if the employer has fifteen or more employees, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

18. APPLICABLE LAW:

This Agreement shall be governed by the laws of the State of New Mexico.

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this agreement may be terminated by the contracting Department.

19. INDEMNIFICATION:

Each party shall be solely responsible for fiscal or other sanctions, penalties, or fines occasioned as a result of its own violation or alleged violation of requirements applicable to performance of the Agreement. Each party shall be liable for its acts or failure to act in accordance with this agreement, subject to the immunities and limitations of the New Mexico Tort Claims Act.

20. OTHER PROVISIONS:

This Agreement is contingent upon compliance with the 2009-2010 Request for Proposal Guidelines and the 2009-2010 Request for Payment Form.

21. NOTICES:

128

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by electronic mail, facsimile, U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Department:

New Mexico Tourism Department
Audrey Herrera
491 Old Santa Fe Trail
Santa Fe, NM 87501
505-827-7325
audrey@newmexico.org

To the Contractor:

City of Las Cruces Convention and Visitors Bureau
Anna Maya
211 N. Water St.
Las Cruces, New Mexico 88001
annam@las-cruces.org

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of New Mexico.

CONTRACTOR	
By:	Title:
Date:	

STATE OF NEW MEXICO	
New Mexico Tourism Department	
By:	
Date:	

NEW MEXICO TAXATION & REVENUE DEPARTMENT	
The records of the New Mexico Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department to pay gross receipts and compensating taxes, if applicable.	
ID: 01-406383-002	
By:	
Date:	

APPROVED AS TO FORM:
[Signature]
Attorney

**CITY OF LAS CRUCES
ADOPTED BUDGET FY 2009/2010**

FUND	DIVISION		FUND TYPE	
Convention & Visitors Bureau Fund 2710	Public Services		Special Revenue	
	FY 2008/09 Prelim Actual*	FY 2009/10 Adopted	Adjustment	FY 2009/10 Adjusted
RESOURCES				
Beginning Balance	\$ 2,181,969	1,960,231	(30,456)	1,929,775
REVENUES				
520007 Farmer's and Crafts Market Fee - CVB	\$ 1,749	0		0
552016 New Mexico Tourism Department	20,000	20,000	(1,300)	18,700
570010 Interest on Investment	45,348	45,000		45,000
543210 CVB Merchandise Sales	9,914	6,000		6,000
590015 Net Incr (Decr) Fair Value Investment	12,813	10,000		10,000
592001 Reimbursed Expense Other	9,523	0		0
Total Revenues	\$ 99,347	81,000	(1,300)	79,700
Total Resources	\$ 2,281,316	2,041,231	(31,756)	2,009,475
EXPENDITURES				
CVB Administration 27205010				
Personnel Services	\$ 557,722	643,956		643,956
Operating	92,484	116,600		116,600
Capital Outlay	18,012	0		0
Total CVB Administration 27205010	\$ 668,218	760,556	0	760,556
CVB Convention/Tourism 27205020				
Operating	\$ 670,818	862,073	18,700	880,773
Total CVB Convention/Tourism 27205020	\$ 670,818	862,073	18,700	880,773
CVB Special 27205030				
Operating	\$ 66,777	72,581		72,581
Total CVB Special 27205030	\$ 66,777	72,581	0	72,581
Railroad Museum 27205040				
Personnel Services	\$ 30,016	14,430		14,430
Operating	1,900	0		0
Total Railroad Museum 27205040	\$ 31,916	14,430	0	14,430
X-Prize Cup 27205050				
Personnel Services	\$ 9,510	0		0
Operating	0	0		0
Total X-Prize Cup 27205050	\$ 9,510	0	0	0
Farmer's Market 27184010				
Personnel Services	\$ 14,763	0		0
Operating	59	0		0
Total Farmer's Market 27184010	\$ 14,822	0	0	0
CVB Las Cruces Center 27205200				
Operating	\$ 34,061	482,109		482,109
Total CVB Las Cruces Center 27205200	\$ 34,061	482,109	0	482,109

*Preliminary Actual as of 11/16/09.

**CITY OF LAS CRUCES
ADOPTED BUDGET FY 2009/2010**

FUND	DIVISION		FUND TYPE	
Convention & Visitors Bureau Fund 2710	Public Services		Special Revenue	
	FY 2008/09 Prelim Actual*	FY 2009/10 Adopted	Adjustment	FY 2009/10 Adjusted
5% reduction	0	0		0
Total Expenditures	\$ 1,496,122	2,191,749	18,700	2,210,449
OTHER FINANCING SOURCES (USES)				
Transfer from Fund 2820 - Lodger's Tax (85%)	\$ 1,617,529	1,422,458		1,422,458
Transfer from Fund 2820 - Tourism (2.5%)	41,475	41,837		41,837
Transfer to Fund 1000 - General Fund	(16,500)	(16,500)		(16,500)
Transfer to Fund 3614 - Convention Center Debt Svc	(497,923)	0		0
Total Other Financing Sources (Uses)	\$ 1,144,581	1,447,795	0	1,447,795
ENDING BALANCE	\$ 1,929,775	1,297,277	(50,456)	1,246,821

*Preliminary Actual as of 11/16/09.